

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DIANA LYNN FLETCHER,

Defendant-Appellant.

UNPUBLISHED

April 14, 2009

No. 280245

Calhoun Circuit Court

LC No. 2006-001334-FH

Before: Zahra, P.J., O’Connell and K. F. Kelly, JJ.

PER CURIAM.

Defendant Diana Lynn Fletcher pleaded no contest to four counts of resisting and opposing a police officer, MCL 750.81d(1). On August 28, 2006, the circuit court sentenced defendant to 36 month’s probation, with fines, costs, restitution, and an attorney reimbursement obligation. On March 19, 2007, defendant’s motion to correct invalid sentence was denied. Defendant filed a delayed application for leave to appeal her sentence, which this Court granted. *People v Fletcher*, unpublished order of the Court of Appeals, entered 9/25/2007 (Docket No. 280245). We affirm.

First, defendant argues the circuit court impermissibly required defendant to reimburse \$400 for her court-appointed attorney without first considering her financial situation. Generally, this Court reviews a circuit court’s sentencing decisions for an abuse of discretion, but a defendant “pressing an unpreserved claim of error must show a plain error that affected substantial rights.” *People v Conley*, 270 Mich App 301, 312; 715 NW2d 377 (2006) citing *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). “A person who was afforded appointed counsel might be ordered to reimburse the county for the costs of that representation, if such reimbursement can be made without substantial hardship.” *People v Trapp (On Remand)*, 280 Mich App 598, 600; 760 NW2d 791 (2008). However, before a circuit court can order reimbursement, it must “provide some indication that it considered the defendant’s financial situation prior to ordering reimbursement.” *Id.*; *People v Dunbar*, 264 Mich App 240-254-255; 690 NW2d 476 (2004). The record indicates the circuit court considered defendant’s financial situation at sentencing and determined defendant may have the future ability to pay the court-appointed attorney fees. Indeed, the circuit court even expressed a willingness to reconsider defendant’s request toward the end of her probationary period. Because the record indicates the circuit court did “provide some indication that it considered the defendant’s financial situation before ordering reimbursement,” the \$400 fee is affirmed. *Trapp (On Remand)*, *supra* at 601.

Second, defendant maintains that the \$100 fine and the \$1,060 court costs should be vacated because defendant's financial situation is precarious. In general "probation is a matter of grace, not of right, and . . . the trial court enjoys broad discretion in determining the conditions to be imposed as part of probation." *People v Oswald*, 208 Mich App 444, 446; 528 NW2d 782 (1995). MCL 771.3(2)(b) authorizes a circuit court to impose fines and costs as a condition of probation. The circuit court cannot impose costs "unless the probationer is or will be able to pay them during the term of probation." MCL 771.3(6)(a). Defendant's presentence report indicated that the 48-year-old defendant had a GED; suffered from no physical disabilities; and she had no ongoing addictions to drugs and alcohol. Defendant suffered from chronic bronchitis and emphysema, but both conditions were treatable and neither was debilitating. While she was receiving treatment for her mental health problems, specifically depression, she had a history of employment. Moreover, defendant was seeking Social Security benefits which, if obtained, would raise her income. In sum, the record indicates the circuit court appreciated defendant's current financial obligations, and correctly concluded that defendant's financial situation may improve in the future and permit her to pay the fines and costs.

Third, defendant contends she should not be required to pay the full amount of restitution for a police officer's injuries because she was not the cause of all the injuries. This Court "typically reviews the amount of a restitution order for an abuse of discretion." *People v Newton*, 257 Mich App 61, 68; 665 NW2d 504 (2003). MCL 780.766(2) states "the court shall order . . . that the defendant make full restitution to any victim of the defendant's course of conduct that gives rise to the conviction or to the victim's estate." The Michigan Supreme Court has held that the phrase "course of conduct" is broadly defined and "the defendant should compensate for all the losses attributable to the illegal scheme that culminated in his conviction . . ." *People v Gahan*, 456 Mich 264, 272; 571 NW2d 503 (1997). The record establishes that some of the injuries sustained by the police officer during the process of arresting defendant and her son were the result of persons other than defendant. However, as explained above, this fact is not relevant. The critical issue is whether the officer's injuries were attributable to the course of conduct that culminated in the conviction of defendant. We conclude there was sufficient evidence in the record to ascertain that the police officer's injuries were attributable to defendant's course of conduct. See *People v Letts*, 207 Mich App 479, 481; 525 NW2d 171 (1994).

We reject defendant's request for an evidentiary hearing to determine if defendant's actions caused the police officer's injuries. "Any dispute as to the proper amount or type of restitution shall be resolved by the court by a preponderance of the evidence." MCL 780.767(4). This statute "affords defendant an evidentiary hearing when the amount of restitution is contested . . ." *Gahan, supra* at 276. However, because defendant failed to request an evidentiary hearing at sentencing or in her motion to correct invalid sentence, defendant has waived her right to an evidentiary hearing. *Gahan, supra* at 276.

Affirmed.

/s/ Brian K. Zahra
/s/ Peter D. O'Connell
/s/ Kirsten Frank Kelly